

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION**

|                                       |   |                            |
|---------------------------------------|---|----------------------------|
| UNITED STATES OF AMERICA and          | ) |                            |
| THE STATE OF WISCONSIN,               | ) |                            |
|                                       | ) |                            |
| Plaintiffs,                           | ) |                            |
|                                       | ) |                            |
| v.                                    | ) |                            |
|                                       | ) |                            |
| NCR CORPORATION,                      | ) |                            |
| APPLETON PAPERS INC.,                 | ) | Civil Action No. 10-cv-910 |
| BROWN COUNTY,                         | ) |                            |
| CITY OF APPLETON,                     | ) | Hon. William C. Griesbach  |
| CITY OF GREEN BAY,                    | ) |                            |
| CBC COATING, INC.,                    | ) |                            |
| GEORGIA-PACIFIC CONSUMER PRODUCTS LP, | ) |                            |
| KIMBERLY-CLARK CORPORATION,           | ) |                            |
| MENASHA CORP.,                        | ) |                            |
| NEENAH-MENASHA SEWERAGE COMMISSION,   | ) |                            |
| NEWPAGE WISCONSIN SYSTEMS, INC.,      | ) |                            |
| P.H. GLATFELTER CO.,                  | ) |                            |
| U.S. PAPER MILLS CORP. and            | ) |                            |
| WTM I COMPANY,                        | ) |                            |
|                                       | ) |                            |
| Defendants.                           | ) |                            |

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**DEFENDANT NCR CORPORATION'S OPPOSITION TO  
CERTAIN DEFENDANTS' CIVIL L. R. 7(h) EXPEDITED NON-DISPOSITIVE  
MOTION TO MODIFY THE CASE MANAGEMENT SCHEDULE**

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NCR Corporation (“NCR”) opposes Certain Defendants’ renewed effort to delay the December 3 trial date and asks the Court to enter the amended Case Management Schedule proposed by Plaintiffs (the “Government”). (Dkt. #482-1.) While NCR and the Government have negotiated a modest adjustment to the schedule to allow the parties to respond to the recent guidance provided by the Seventh Circuit in affirming this Court’s PI Order, a new trial date is not needed and would severely prejudice NCR. The goal of Certain Defendants is clear: to keep paying nothing for the cleanup of the Lower Fox River while NCR alone shoulders the cleanup burden. And it is a massive burden. To comply with this Court’s PI Order, NCR is incurring, on average, well over \$300,000 in costs *per day*, and in total will be compelled to spend approximately \$70 million this season alone, without ever having had the benefit of a trial on the merits. (No. 12-2069 (7th Cir.), Dkt. #22 at 24.) Certain Defendants can point to no compelling reason to delay the trial date and raise the specter of *again* addressing a remediation season through a preliminary injunction.

Instead, the amended Case Management Schedule proposed by the Government, which preserves the December 3 trial date, is a necessary and reasonable alternative. The amendments in the Government’s proposed schedule are necessary in light of the Seventh Circuit’s recent divisibility ruling. (No. 12-2069 (7th Cir.), Dkt. #43.) Through that opinion, the first appellate ruling addressing the standard for divisibility after *Burlington Northern*, the Seventh Circuit clarified its view on the required showing for a divisibility defense. NCR is working expeditiously with its experts to demonstrate that NCR meets the divisibility standard set forth by the Seventh Circuit, but it is not possible for NCR’s experts to do so by the current expert report

deadline of August 31. NCR's experts will be prepared, however, to submit reports on divisibility under the modestly delayed deadline reflected in the Government's proposed schedule. Given the crucial importance of the divisibility issue, and the timing of the Seventh Circuit's opinion, NCR respectfully submits that the modest amendments proposed by the Government are well warranted.

The amended Case Management Schedule proposed by the Government is also reasonable. While it compresses the time period for summary judgment briefing, there will be few (if any) additional summary judgment motions filed. Certain Defendants have already submitted a motion for summary judgment related to their remedy challenge and the sufficiency of the administrative record, and briefing on that motion is complete. (Dkt. #386.) Similarly, the Government has already moved to dismiss certain affirmative defenses raised by Defendants, and briefing on that motion is complete as well. (Dkt. #430.) Further, NCR understands that no party currently intends to move for summary judgment on divisibility.

For these reasons, NCR respectfully requests that the Court deny Certain Defendants' motion to delay the trial date and enter the amended Case Management Schedule proposed by the Government.

Dated: August 22, 2012

Respectfully submitted,

/s/ Darin P. McAtee

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